

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

**WASHINGTON HARBOUR, SUITE 400**

**3050 K STREET, NW**

**WASHINGTON, D.C. 20007-5108**

NEW YORK, NY

LOS ANGELES, CA

CHICAGO, IL

STAMFORD, CT

PARSIPPANY, NJ

FACSIMILE

(202) 342-8451

www.kelleydrye.com

(202) 342-8400

BRUSSELS, BELGIUM

AFFILIATE OFFICES

MUMBAI, INDIA

DIRECT LINE: (202) 342-8518

EMAIL: tcohen@kelleydrye.com

August 12, 2016

**Via ECFS**

Marlene Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: *Ex Parte* Filing of the American Cable Association on Expanding  
Consumers' Video Navigation Choices, MB Docket No. 16-42, and  
Commercial Availability of Navigation Devices, CS Docket No. 97-80**

Dear Ms. Dortch:

The American Cable Association (“ACA”) notes that two recent *ex parte* submissions by proponents of the Federal Communications Commission’s (“FCC’s” or “Commission’s”) Navigation Device proposal have cited ACA’s estimation of the substantial cost of the “App” proposal submitted by the National Cable & Telecommunications Association (“NCTA”)<sup>1</sup> to justify adoption of the Commission’s device proposal.<sup>2</sup> However, they mischaracterize ACA’s

---

<sup>1</sup> See Letter from Thomas Cohen, Counsel to the American Cable Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 16-42, CS Docket No. 97-90 (July 12, 2016); Letter from Mary C. Lovejoy, Vice President of Regulatory Affairs, ACA, MB Docket No. 16-42, WC Docket No. 16-143 (July 26, 2016).

<sup>2</sup> See Letter from John Bergmayer, Senior Staff Attorney, Public Knowledge, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 16-42, CS Docket No. 97-90 (July 29, 2016) (“PK additionally noted, in agreement with the American Cable Association, that apps-based approaches are generally more burdensome on MVPDs than the Commission’s ‘information flows’ proposal, which could be implemented by MVPDs quite easily.”); Letter from Robert Schwartz, Counsel to Hauppauge Computer Works, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 16-42, CS Docket No. 97-90 (Aug. 3,

Marlene H. Dortch  
August 12, 2016  
Page Two

position in these proceedings, and their citation of only select data and information ACA submitted to the Commission is misleading and misplaced. Rather, the full story ACA tells in the cited *ex partes*, and has been telling in all other filings in these proceedings,<sup>3</sup> is that the Commission's Navigation Device proposal should be rejected because it is unlawful and, among other problems, it fails to protect the rights of content holders, the privacy of consumers, and continued access to emergency alerts. Moreover, it is technologically unproven, and ACA's best guess is that the least burdensome means of complying would cost at least \$1 million per system.<sup>4</sup> Should the Commission ignore these problems and the substantial costs and adopt its proposal or any other proposal that incurs such substantial costs, ACA has explained that hundreds of cable operators would go out of business or cease offering video service, and many others would need to divert significant sums from investments in their broadband networks, frustrating their broadband customers who are demanding more capacity and faster speeds. Accordingly, the Commission should in no case apply its proposal or any comparable proposal to MVPDs with 1 million or fewer subscribers.

In discussing the "App" proposal, ACA noted that larger MVPDs were committing to undertake significant and costly obligations – upwards of approximately \$2 million per system – to give consumers an alternative to leasing MVPD-provided set top boxes that avoids copyright, privacy, and emergency awareness problems, and other concerns with the Commission's proposal. Accordingly, it is incorrect to suggest that ACA's comments regarding the "App" proposal either support adoption of the Commission's proposal, provide evidence that it is an overall better approach than the "App" proposal for MVPDs, or that ACA was commenting in any respect on apps-based approaches generally.

---

2016) ("Hauppauge agrees with ACA that, as elaborated upon, the App Alternative would be more complex and expensive than the more flexible path to competition laid out in the NPRM.").

<sup>3</sup> See e.g., Comments of the American Cable Association, MB Docket No. 16-42, CS Docket No. 97-90 at 2 (Apr. 22, 2016) ("ACA Comments"); Reply Comments of the American Cable Association, MB Docket No. 16-42, CS Docket No. 97-90 at 3-8 (May 23, 2016) ("ACA Reply Comments").

<sup>4</sup> See ACA Comments at 40-54; ACA Reply Comments at 31-41. ACA's estimate covers those requirements that are known and sufficiently refined. ACA has explained that the Commission's proposal is more a framework with many elements still to be defined and fleshed out. ACA, therefore, cannot determine all the costs of the Commission's proposal nor can it determine whether proposal is technologically feasible nor can it determine, should there be solutions, when they will be developed.

**KELLEY DRYE & WARREN LLP**

Marlene H. Dortch  
August 12, 2016  
Page Three

This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules.

Sincerely,



Thomas Cohen  
Kelley Drye & Warren, LLP  
3050 K Street N.W.  
Washington, DC 20007  
202-342-8518  
tcohen@kelleydrye.com  
Counsel for the American Cable Association

cc: Gigi Sohn  
Jessica Almond  
Louisa Terrell  
Scott Jordan  
Eric Feigenbaum